

IP 01-0135-CR 1 B/F USA v Merriweather  
Magistrate Kennard P. Foster

Signed on 11/04/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 01-135-CR-01-B/F
	)	
SHEILA MERRIWEATHER,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on June 27, 2005, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on June 27, 2005, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §3401(I) and 3583(e). All proceedings regarding this matter were held on November 3, 2005, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Ms. Merriweather appeared in person with her appointed counsel, William Dazey, Indiana Federal Community Defender’s Office. The government appeared by Gayle Helart for Christina McKee, Assistant United States Attorney. U. S. Parole and Probation appeared by Chris Dougherty, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, of the Indiana Federal Community Defender's Office, was present and appointed by the Court to represent Ms. Merriweather in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release, filed June 27, 2005, was provided to Ms. Merriweather and her counsel who informed the Court that they had read and understood the specifications of the violations charged therein and waived further reading thereof.

3. Ms. Merriweather was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition to Revoke Supervised Release.

4. That Ms. Merriweather would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Ms. Merriweather had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Ms. Merriweather had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on June 27, 2005.

7. Mr. Dazey stated that Ms. Merriweather would stipulate there is a basis in fact to hold her on the violation of supervised release set forth in the Petition to Revoke Supervised Release, filed June 27, 2005. Ms. Merriweather then signed a written waiver of preliminary examination.

8. Ms. Merriweather, by counsel, stated that she did not oppose the Petition and would admit to the specified violations of her supervised release as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on June 27, 2005 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p><b>“The defendant shall not commit another federal, state or local crime.”</b></p> <p>Sheila Merriweather was arrested by officers of the Indianapolis Police Department on June 15, 2005, and was charged with Possession of Cocaine, D-felony, under cause #05-102640. A search warrant was served at 2942 N. Euclid Avenue, Indianapolis, and the offender was found in the residence with two other individuals. When officers initial entered the residence, Ms. Merriweather allegedly fled into the bathroom and flushed the toilet prior to being apprehended and handcuffed. When officers searched the offender, some cocaine was found in her shirt pocket. She has a pre-trial conference scheduled on June 24, 2005, in Marion County Superior Court. She is being held in the Marion County Jail on a no bond hold, as she also has a pending probation violation hearing scheduled in Marion County Courts on June 28, 2005, for failure to report to the Marion County Probation office on a prior conviction of or Robbery under cause #00-074421.</p>
2	<p><b>“The defendant shall refrain from any unlawful use of a controlled substance.”</b></p> <p>The offender submitted urine screens which tested positive for cocaine on May 24, 2005, May 31, 2005 and June 13, 2005. The urine screen on June 13, 2005, also tested positive for marijuana. Ms. Merriweather has verbally admitted illegal drug use which caused all three of the positive tests.</p>
3	<p><b>“The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.”</b></p> <p>According to Indianapolis Police Department East District Detective Travis Sperry, who was one of the arresting officers on this case, the search warrant was issued and served based upon information of</p>

illegal drug activity occurring at 2942 N. Euclid Avenue. At the time Ms. Merriweather was arrested, officers also located additional crack-cocaine in the residence, as well as scales commonly used by narcotic dealers, a glass pipe with alleged cocaine residue, and a loaded CAC .38 caliber firearm (serial no 35262), which was found on a couch in the living room. The other two persons arrested in the residence, Helen Smith and Stephen Johnson, have criminal histories.

Counsel for the parties further stipulated the following:

- 1) Ms. Merriweather has a relevant criminal history category of VI. *See, U.S.S.G. §7B1.4(a).*
- 2) The most serious grade of violation committed by Ms. Merriweather constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Ms. Merriweather is 21-24 months.
- 4) The appropriate disposition of Ms. Merriweather's supervised release upon hearing before the Court is to modify her supervised release as follows:
  - i.* Ms. Merriweather's supervised release conditions be modified to add the additional condition that she reside for six (6) months at the Indianapolis Community Corrections Center, namely, the Volunteers of America, in accordance with its rules and regulations, when designated by the Bureau of Prisons. Ms. Merriweather will then continue on supervised release under the previously-ordered conditions of supervised release entered by the Court.

The Court then inquired directly of Ms. Merriweather while under oath whether she admitted the violations stipulated to above. Ms. Merriweather admitted to the violations. The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of her supervised release. The defendant's supervised release is therefore **MODIFIED** and Sheila Merriweather's supervised release shall continue as previously set with the following modifications:

(1) She shall reside at the Indianapolis Community Corrections Center, namely, the Volunteers of America, in accordance with its rules and regulations, when designated by the Bureau of Prisons for a period of six (6) months. Ms. Merriweather shall then continue on supervised release under the previously-ordered conditions of supervised release entered by the Court.

Counsel for the parties and Ms. Merriweather entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure*, and/or may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation, upon which he may reconsider.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Ms. Merriweather's supervised release.

**IT IS SO RECOMMENDED** this 4<sup>th</sup> day of November, 2005.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

Copies:

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